IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 3118 of 2007(U)

PETITIONER:

M.H.SIDDIQUE,
MARATTIKUNNEL, THODUPUZHA.

BY ADV. SRI.HARUN-AL-RASHID

RESPONDENTS:
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1. **THE ASST. ENGINEER,**
   KSE BOARD, ELECTRICAL SECTION NO.1,
   THODUPUZHA.

2. **THE DEPUTY CHIEF ENGINEER,**
   KSE BOARD, ELECTRICAL CIRCLE OFFICE,
   THODUPUZHA.

3. **THE CHIEF ENGINEER,**
   KSE BOARD, VYDUTHI BHAVAN,
   PATTOM, THIRUVANANTHAPURAM.

4. **KERALA STATE ELECTRICITY BOARD**
   REPRESENTED BY ITS SECRETARY,
   VYDHUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.3118/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF BILL DTD. 11/10/99.**

EXT.P2; **COPY OF INTIMATION DTD. 27/10/99.**

EXT.P3: **COPY OF PURCHASE BILL NO.147 DTD. 21/09/99.**

EXT.P4: **COPY OF PURCHASE BILL NO.148 DTD. 21/09/99.**

EXT.P5: **COPY OF PROCEEDINGS NO.GBI/SUIT/2001-02/1521 DTD. 4/12/01.**

EXT.P6: **COPY OF PETITION DTD. 7/12/01.**

EXT.P7: **COPY OF NOTICE DTD. 23/02/06.**

EXT.P8: **COPY OF COVERING LETTER DTD. 23/02/2006.**

EXT.P9: **COPY OF THE PETITION DTD. 30/06/2006.**

EXT.P10: **COPY OF THE PETITION DTD. 30/06/2006.**

EXT.P11: **COPY OF THE REPORT DTD. 1/07/2006.**

EXT.P12: **COPY OF THE INTERIM ORDER DTD. 10/08/2006.**

EXT.P13: **COPY OF THE ORDER DTD. 18/07/2006.**

EXT.P14: **COPY OF THE INSTRUCTIONS OF THE KSE BOARD NOT TO LEVY INTEREST DURING APPEAL PERIOD.**

EXT.P15: **COPY OF THE COMMUNICATION DTD. 7/12/2006.**

EXT.P16: **COPY OF THE DEMAND NOTICE DTD. 5/01/07.**

EXT.P17: **COPY OF THE AFFIDAVIT DTD. 2/2/2007 IN WP(C) NO.3118/2007.**

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): **COPY OF ROUGH SKETCH.**

EXT.R1(B): **COPY OF SUBMISSION.**

EXT.R1(C): **COPY OF MAHAZAR.**

EXT.R1(D): **COPY OF CERTIFICATE**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 3118 OF 2007-U

JUDGMENT

The petitioner has approached this Court, feeling aggrieved by the action of the respondents in disconnecting the power supply to his residential building.

2. The brief facts of the case are the following: The petitioner is having a domestic connection with Consumer No.7745 TPE, under the first respondent. He constructed a new bus body building workshop in the residential compound and applied for Three Phase connection for the same in June, 1998. He executed a minimum guarantee agreement. A new transformer was also installed to give him power supply. While so, the officials of the K.S.E.B., who visited the workshop, directed the petitioner to change the wiring. Pursuant to the said direction, the Electrical Contractor tested the installation on 5-10-1999, by taking connection from the petitioner's residence. When the testing operation was going on, the Special Squad inspected the residential premises on the same day. On finding temporary extension to the work shop, the service connection to the residence of the petitioner was disconnected, on the allegation of misuse of

electrical energy and thereafter he has been served with Ext.P1 penal bill dated 11-10-1999, demanding an amount of Rs.5,22,219/-. In the meantime his application for power supply to the workshop was processed and finally connection was given in the month of November, 1999. Apparently, based on the consumption pattern in the workshop, the petitioner has been served with a supplementary bill for an amount of Rs.53,420/- for the period from April, 1999 to October, 1999, for the temporary extension made to the workshop. Ext.P2 dated 5-6-2001 is the said bill. The petitioner submits, Exts.P1 and P2 bills are illegal and untenable. He asserts, he purchased necessary machinery for the workshop only on 21-9-1999, as evident from Exts.P3 and P4 bills. So, the demand for penal charges from April 1999 to October, 1999 is manifestly unjust. Against Exts.P1 and P2, the petitioner filed appeal before the second respondent on 26-10-1999. The said appeal was dismissed by Ext.P5 proceedings dated 4-12-2001. Upon receipt of the order, he filed a further appeal, a copy of which is produced as Ext.P6, before the third respondent Chief Engineer. A hearing was held by the Chief Engineer on Ext.P6, on 15-2-2002. But, no orders were passed on the said appeal. In the mean time the petitioner filed O.S.No.212 of 2001 before the Munsiff's Court, Thodupuzha. But, the plaint was rejected under Order VII Rule 11 of

C.P.C. On the rejection of the plaint, the first respondent issued a fresh bill demanding an amount of Rs.13,15,951/-. Ext.P7 is the demand notice and Ext.P8 is its covering letter. The petitioner submitted a representation on 30.6.2006, before the 2nd respondent praying that pending final disposal of Ext.P6 appeal, the connection to his residential house may be restored. He also submitted Ext.P10 representation before the second respondent requesting to settle the issue by receiving an amount of Rs.5,22,219/- in 20 instalments. The petitioner's request for closing the account by paying the amount was favourably recommended by the Deputy Chief Engineer by Ext.P11 communication. In the mean time, apprehending that coercive steps may be taken against him, the petitioner approached this Court by filing W.P.(C) No. 18480 of 2006. In the said writ petition, there was an interim order to re-connect the supply, on payment of Rs.5,50,000/- provided the payment was made within three weeks. Ext.P12 is the said interim order. Later, the Secretary, K.S.E.B. issued Ext.P13 communication, directing the petitioner to pay Rs.5,22,290/- with 12% surcharge or to pay the amount in 6 instalments with 18% surcharge. Thereupon, he represented, complaining about the levy of interest. He relied on Ext.P14 instructions issued by the K.S.E.B. against levy of interest during the pendency of the appeal. Later, the petitioner has been served

with Ext.P15 communication, rejecting his claim for waiver of surcharge during the pendency of the appeal. Still later, the Board issued a fresh demand notice, Ext.P16 directing the petitioner to pay an amount of Rs.9,87,520/- on or before 20-1-2007. In the above factual background, this writ petition was filed, challenging Exts.P1, P2, P13, P15 and P16. He also seeks a direction to restore the connection which was again disconnected in 2006. According to the petitioner, the extension to the workshop was taken only for testing the machines. There was no unauthorized consumption. The illegality, if at all, was committed only for a day and huge penalty imposed for that, is unjust, it is submitted.

3. The first respondent filed a counter affidavit in this writ petition on 21-2-2007. In the said affidavit, it is submitted as follows: On the basis of the report of the Anti Power Theft Squad, Exts.P1 and P2 bills were issued. For non-payment of the amounts demanded therein, disconnection was effected in 2001. The petitioner filed O.S.212 of 2001 before the Munsiff Court, Thodupuzha challenging the inspection and further demand. The said suit was dismissed. Against the demand, the petitioner filed appeal before the Deputy Chief Engineer. The same was dismissed as per Ext.P5 proceedings dated 4-12-2001. Further, the appeal Ext.P6 filed before the Chief Engineer is not legally maintainable. W.P.(C)

No.18480/2006 filed by the petitioner was withdrawn by him. In the said writ petition, he challenged Exts.P1 and P2 demands. So, they have become final, especially in view of the finality gained by Ext.P5, it is submitted. By Ext.P13, the K.S.E.B. granted substantial relief to the petitioner. He may pay it and apply for re-effecting the connection, as it was already dismantled on 25-1-2007. Since the connection is dismantled and arrears are not cleared, revenue recovery steps are taken against the petitioner, it is submitted.

4. The petitioner has filed a reply affidavit, dealing with the averments in the counter affidavit. The allegations against the petitioner are denied. The connection was not dismantled, but only the meter was removed form the premises on 2-2-2007, when the matter was pending before this Court. The Chief Engineer entertained Ext.P6 appeal and heard it also, though no final orders are passed. W.P.(C) No. 18480 of 2006 was allowed to be withdrawn on 9-2-2007, finding that the reliefs sought in this writ petition included those sought in that writ petition also. When both the cases were posted together, the first case was allowed to be withdrawn, finding that the petitioner's rights are protected by the reliefs in the second writ petition.

5. The K.S.E.B., later filed an additional counter affidavit on

7.3.2007. Along with the said counter affidavit, it. has produced Ext.R1(a) sketch, showing the location of the petitioner's house, the new workshop and the old workshop run by his father. Originally, the petitioner's father had electric connection in the old work shop. After partition, the petitioner started his own bus body building work shop and was continuously running the said workshop in the new premises. While so, on 20-9-1999, the Sub Engineer, Electrical Section, Thodupuzha submitted Ext.R1(b) report before the Assistant Executive Engineer, stating that there is temporary extension of power connection from the petitioner's residence to the new work shop. When the Sub Engineer visited the premises to prepare the estimate for shifting the electric post, based on the application filed by the petitioner, he saw the extension and submitted the report. The contents of Ext.R1(b) would show that the petitioner was running the workshop with the unauthorized extension for some time. The Sub Engineer visited the premises on the basis of the application of the petitioner. The submission of the petitioner that the said officer directed the petitioner to re-wire the workshop is not correct. On getting information regarding the misuse of energy, an inspection was conducted by the Special Squad at 6.30 p.,m on 5.10.1999 and prepared Ext.R1(c) mahazar. It was found that the petitioner has taken unauthorised temporary extension from the domestic connection,

to the automobile body building workshop without the permission of the K.S.E.B. Pursuant to the detection of misuse of energy, Ext.P1 demand dated 11.10.1999 for an amount of Rs.5,22,219/- was served on the petitioner. The said bill was raised under Section 42(d) of the Conditions of Supply of Electrical Energy. The submission of the petitioner that he was just testing the machines when the inspection was conducted, is an incorrect story cooked up, to escape from the liability arising out of the unauthorised extension. The tariff applicable to temporary extension is LT VIII. So, the additional bill was prepared, taking into account the said tariff, for a period of six months prior to the date of detection. The penalty was imposed only on fixed charges and not on energy charges, it is submitted. Ext.P6 appeal filed by the petitioner is not maintainable under the provisions of the statute. The Accountant General pointed out the irregularity in not imposing penalty for the energy charges in Ext.P1. So, this irregularity was rectified by issuing Ext.P3 demand, it is submitted.

6. The contentions raised by the petitioner, relying on Exts.P3 and P4 bills are untenable. At the time of inspection on 5.10.1999, it was found that the total connected load was 53 KW. There were five welding machines having capacity of 16 KVA (2 Nos.), 12 KVA (2 Nos.) and 3 KVA (1 No.). Later, on the basis of the oral complaint made by the

petitioner, the Deputy Chief Engineer and the Executive Engineer made an inspection on 8.10.1999 and the connected load of two welding machines was reduced to 6 KVA, instead of 16 KVA. Apart from that, the report about one welding set with a connected load of 12 KVA was modified as a welding machine having a connected load of 6 KVA. So, the total connected load was reduced to 33 KW. Exts.P3 and P4 bills are unreliable, as they are not genuine documents, it is submitted. The Sub Engineer by Ext.R1(d) has certified that the wiring of the petitioner's premises is satisfactory and therefore,the contention that he was directed to remove and replace the wiring, is incorrect, it is submitted.

7. In the meantime, the petitioner filed O.S.212/2001 before the Munsiff's Court, Thodupuzha seeking injunction against Ext.P1 demand. The said suit was finally dismissed in October, 2005. The photographs taken at the time of preparing the mahazar, which were produced before the Munsiff's Court, would show that the petitioner was running a pucca bus body building workshop and the claim of the petitioner that he was just testing the machines, is not correct. Since the petitioner did not pay the amount demanded under Ext.P7, the connection to his residence was disconnected on 28.6.2006. The petitioner filed W.P.(C) No. 18480/2006 before this Court, challenging Exts.P1, P2 and P5. This Court passed

Ext.P12 interim order on 10.8.2006, ordering re-connection, subject to payment of Rs.5.5 lakhs. The petitioner did not pay any amount. On the basis of Exts.P9 and P10 representations, the Deputy Chief Engineer issued Ext.P11 letter to the Member (Distribution), Vydhyuthi Bhavan, K.S.E.B., Thiruvananthapuram, to extend the facility of payment of the amount in instalments, to the petitioner. Pursuant to the said communication, Ext.P13 order was issued by the Secretary, K.S.E.B., permitting the petitioner to pay the amount in lunpsum with 12% interest or to pay the amount in six instalments with 18% interest. The petitioner did not pay any amount. Therefore, the power connection was dismantled on 25.1.2007. The petitioner was operating the workshop since 1998, misusing the electrical energy supplied to his house, it is submitted. On the above pleadings the respondents pray for dismissal of the writ petition.

8. The petitioner has filed an additional reply affidavit, dealing with the averments in the additional counter affidavit. On the visit of the higher officials, the connected load wrongly noticed in the mahazar was corrected. The petitioner purchased the welding sets only on 21.9.1999 and they were installed in the workshop only subsequently. The items found in the workshop at the time of inspection were old items taken from the workshop run by his father. Only after installing the machines on 21.9.1999,

temporary extension for testing them was taken on 5.10.1999 from the residence of the petitioner. Exts.P3 and P4 bills are genuine. The contentions to the contrary are incorrect. So, the petitioner prays for allowing the writ petition, rejecting the contentions of the respondents.

9. Heard the learned counsel on both sides. The main dispute raised in this writ petition is whether the petitioner was using the unauthorised extension for a single day for testing the newly installed machines or was using the same from 1998 onwards. This is a disputed question of fact, which cannot be resolved under Article 226 of the Constitution of India. There is no material on record to show that the respondents have any malice against the petitioner and they have acted in bad faith, to harm the interest of the petitioner. Therefore, I find no reason to disbelieve the version of the officials of the K.S.E.B., regarding the unauthorised extension. If that be so, the petitioner is liable to pay the penal charges demanded by the K.S.E.B under the impugned notices. But, I feel that the levy of interest at 24% is unduly harsh. It may be permissible to levy interest at 24%, in the light of the regulations then in force. But, the Division Bench of this Court in **Abdul Nazer v. K.S.E.B.** [2006(1) KLT 811] directed the competent authority of the K.S.E.B to consider whether relaxation of penal interest could be granted in appropriate cases. While considering the question of

levy of interest, the petitioner has got a case that the period the matter was pending in appeal should be excluded, for the purpose of computation of interest. Therefore, it is ordered that the period the appeal, which was disposed of by Ext.P5 order, was pending shall be excluded while computing the interest payable by the petitioner. Though Ext.P6 may not be strictly maintainable under the provisions of the relevant Regulations, the Chief Engineer held a hearing into Ext.P2 on 15.2.2002. So, the said officer also initially proceeded on the footing that Ext.P6 appeal is maintainable. This fact is mentioned in Ext.P11 letter of the Deputy Chief Engineer also. The petitioner was never told that Ext.P6 is not maintainable. The stand that Ext.P6 is not maintainable has been taken for the first time only when the counter affidavit was filed in the connected writ petition, W.P.(C) 18480.2006 on 4.8.2006. In view of the above position, I am of the view that the petitioner is entitled to get relief of penal interest for the said period. Of course, for the fault of the officers of the K.S.E.B., it cannot be prejudiced. There can be no estoppel against the statute also. But, the competent authority shall consider granting waiver of interest for the said period also. At any rate, interest beyond 12% shall, in no case, be levied from the date of filing of Ext.P6 to 4.8.2006, the date on which the K.S.E.B took the stand that Ext.P6 is not maintainable.

10. In the light of the above observations, the amount due from the petitioner has to be re-computed. Accordingly, Exts.P13 and P16 are quashed. The 2nd respondent shall consider the claim of the petitioner for waiver of penal interest, in the light of the observations made hereinabove, within one month from today. He shall issue a revised bill to the petitioner immediately thereafter. The petitioner may pay the amount and seek re-effecting the domestic connection. If he has any grievance against the said bill, he may work out his remedy against the same.

The Writ Petition is disposed of as above.

10th April, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/